

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Tesla Exploration, Inc.)	File Number: EB-11-PA-0153
)	NAL/Acct. No.: 201232400008
Licensee of Station KD29596)	FRN: 0021136999
Greenwood Village, Colorado)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 2, 2012

Released: August 3, 2012

By the Commission:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Tesla Exploration, Inc. (Tesla), licensee of Station KD29596, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act),¹ and Section 1.903(a) of the Commission's rules (Rules),² by operating radio transmitting equipment without a license on eleven unauthorized frequencies. We conclude that Tesla is apparently liable for a forfeiture in the amount of sixty-six thousand dollars (\$66,000).

II. BACKGROUND

2. On July 31, 2011, the FCC Enforcement Bureau's Philadelphia Office (Philadelphia Office) received a complaint from the McKean County 911 Operations Center in Smethport, Pennsylvania (McKean), stating that an unidentified pulsing data signal was causing harmful interference to its primary repeater input frequency, 158.940 MHz. McKean reported that the interference began around July 28, 2011, and was disrupting communications between the police dispatch center and police mobile units.³

3. On August 5, 2011, agents from the Philadelphia Office used radio direction-finding techniques to locate the source of the interfering radio transmissions on 158.940 MHz to a tower-mounted antenna in Bigler, Pennsylvania near the coordinates 40.9736 North Latitude, 78.3252 West Longitude. While at the antenna site, the agents also detected simultaneous pulse transmissions from unidentified sources on the frequencies 156.525 MHz, 156.875 MHz, 157.350 MHz, 157.750 MHz, and 158.400 MHz. Altogether, the agents determined that six unauthorized frequencies were being used. Later that day, the agents met with the property owner and an employee working at the site who informed the agents that the radio transmitting equipment that was operating on the unauthorized frequencies was part of a multi-site, multi-frequency geo-surveying project that Tesla was conducting in the Bigler, Pennsylvania area.

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 1.903(a).

³ The main police dispatch system for McKean operates on 158.940 MHz, which is a public safety pool frequency as detailed in Section 90.20 of the Rules. *See* 47 C.F.R. § 90.20.

4. On September 24, 2011, the Philadelphia Office sent a Letter of Inquiry to Tesla seeking to determine whether Tesla had operated on unauthorized frequencies and the dates, if any, on which the company had commenced operation on any such frequencies.⁴ On October 11, 2011, Tesla responded to the Letter of Inquiry and acknowledged that it was responsible for the operation of the radio transmitting equipment on the unauthorized frequencies observed by the agents on August 5, 2011.⁵ Tesla reported that it deployed fixed transmitter sites on these frequencies on a staggered schedule between July 3, 2011, and July 29, 2011, as part of a geo-surveying project in Bigler, Pennsylvania.⁶ Tesla admitted that it did not have authorization to operate fixed radio transmitting equipment on any of the six frequencies observed by the agents.⁷ In response to a Bureau inquiry, Tesla also admitted that, during this same time period, it operated radio transmitting equipment on five additional frequencies for which it also was not authorized—161.655 MHz, 162.210 MHz, 152.120 MHz, 160.00 MHz, and 153.305 MHz.⁸ In total, Tesla acknowledged operating on eleven unauthorized frequencies in Bigler, Pennsylvania, at eleven different locations. Tesla provided no explanation for its unauthorized operations.

5. On December 7, 2011, the agents returned to the Bigler, Pennsylvania area to conduct monitoring and did not detect emissions on any of the eleven frequencies. The agents also drove to the site where Tesla operated on the frequency 158.940 MHz and observed that the radio transmitting equipment had been dismantled.

III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended (Act), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁹ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁰ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹¹ and the

⁴ Letter of Inquiry from Gene Stanbro, District Director of the Enforcement Bureau’s Philadelphia Office, to Tesla-Conquest, Inc. (Sept. 14, 2011) (on file in EB-11-PA-0153) (LOI).

⁵ Response to Letter of Inquiry from David K. Buttle, President, Tesla Exploration, Inc. to Enforcement Bureau’s Philadelphia Office (Oct. 10, 2011) (on file in EB-11-PA-0153) (LOI Response).

⁶ *Id.* at 1.

⁷ In its LOI Response, Tesla stated that Conquest Seismic Services, Inc., a predecessor entity to Tesla, was authorized to operate mobile and portable equipment on the frequency 158.400 MHz under the call sign WQJV782, but that the license was not transferred to Tesla. *See id.* at 1-2. Our records show that Tesla also held an FCC license under call sign KD29596, which authorized it to operate mobile or portable radio transmitting equipment on various frequencies in the Land Mobile Radio Service on a nationwide basis, but the license did not, at the time of the inspection, authorize Tesla to operate radio transmitting equipment at fixed locations, and nor did the license authorize Tesla to operate on any of the frequencies at issue in this NAL. Thus, at the time of the inspection, Tesla had no license authorizing it to operate any radio transmitting equipment in Bigler, Pennsylvania on the frequencies 156.525 MHz, 156.875 MHz, 157.350 MHz, 157.750 MHz, 158.400 MHz, or 158.940 MHz.

⁸ *Id.* at 1.

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. § 312(f)(1).

¹¹ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each

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Commission has so interpreted the term in the Section 503(b) context.¹² The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹³ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁴

A. Operation of Radio Transmitting Equipment on Unauthorized Frequencies

7. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license issued by the Commission.¹⁵ Section 1.903(a) of the Rules provides that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. Section 1.903(b) further provides that the “holding of an authorization does not create any rights beyond the terms, conditions, and period specified in the authorization.”¹⁶

8. As the record reflects, on August 5, 2011, Enforcement Bureau agents found that Tesla operated radio transmitting equipment on the frequencies 156.525 MHz, 156.875 MHz, 157.350 MHz, 157.750 MHz, 158.400 MHz, and 158.940 MHz. Tesla later admitted to operating on those frequencies from six different fixed locations as well as operating on an additional five unauthorized frequencies at five different locations—161.655 MHz, 162.210 MHz, 152.120 MHz, 160.00 MHz, and 153.305 MHz.¹⁷ While Tesla held an FCC license to operate mobile or portable radio transmitting equipment on various frequencies in the Land Mobile Radio Service on a nationwide basis, the license did not authorize Tesla to operate radio transmitting equipment at fixed locations, and nor did the license authorize Tesla to operate on the eleven aforementioned frequencies. Based on the evidence before us, we find that Tesla apparently willfully and repeatedly violated Section 301 of the Act and Section 1.903(a) of the Rules by operating radio transmitting equipment on the frequencies 156.525 MHz, 156.875 MHz, 157.350 MHz, 157.750 MHz, 158.400 MHz, 158.940 MHz, 161.655 MHz, 162.210 MHz, 152.120 MHz, 160.00 MHz, and 153.305 MHz without authorization.

B. Proposed Forfeiture Amount

9. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operating radio transmitting equipment on an unauthorized frequency is \$4,000.¹⁸ In assessing the monetary forfeiture amount, we must also take into account the statutory factors

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case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹² See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹³ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁴ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

¹⁵ 47 U.S.C. § 301.

¹⁶ 47 C.F.R. § 1.903(b).

¹⁷ LOI Response at 1-2.

¹⁸ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁹

10. The record evidence in this case shows that Tesla operated on eleven unauthorized frequencies for which it had no authorization, which would result in a \$44,000 total proposed forfeiture if we applied the base forfeiture for each violation. We find, however, that the violations here warrant a significant increase from the base forfeiture amount. First, the significant number of apparent violations demonstrates egregious misconduct and disregard for the Act and the Commission's licensing requirements. In addition, Tesla's unauthorized operation on frequency 158.940 MHz was particularly serious because it caused interference to the McKean County 911 Operations Center, disrupting communications between the police dispatch center and police mobile units. Further, because Tesla is part of a large, multinational company, a forfeiture above the base forfeiture amount is necessary to ensure that the forfeiture serves as an effective deterrent (and not simply a cost of doing business) against Tesla's future noncompliance with the Commission's licensing requirements.²⁰ Accordingly, applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Tesla is apparently liable for a total forfeiture in the amount of \$66,000—\$4,000 for each of the eleven unauthorized frequencies (\$44,000) plus a 50 percent (\$22,000) upward adjustment.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules, Tesla Exploration, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of sixty-six thousand dollars (\$66,000) for violations of Section 301 of the Act and Section 1.903(a) of the Rules.²¹

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Tesla Exploration, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Tesla Exploration, Inc. will also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²² When completing the FCC Form 159, enter the Account Number in block number 23A (call

¹⁹ 47 U.S.C. § 503(b)(2)(E).

²⁰ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100, para. 24 (stating need to take into account a violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business); see also *T-Mobile USA, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 12-39, 2012 WL 1305323 at * 7, para. 25 (rel. April 13, 2012) (finding that it was appropriate to consider T-Mobile USA, Inc.'s total annual revenues as a basis for upwardly adjusting the base forfeiture amount). Tesla is a wholly-owned subsidiary of Tesla Exploration, Ltd., a Canadian company, and is responsible for Tesla Exploration Ltd.'s operations in the United States. Tesla Exploration Ltd. reported earnings in 2011 of \$225.4 Canadian Dollars (approximately \$220.19 Million US Dollars). See CoinMill.com – The Currency Converter, available at <http://www.coinmill.com> (last visited June 18, 2012). See also "Tesla Exploration, Ltd., Annual Consolidated Financial Statements for the Years Ended December 31, 2011 and 2010," available at www.teslaexploration.com. It is well-established Commission policy to consider the revenues of a violator's parent company. See, e.g., *SM Radio, Inc.*, Order on Review, 23 FCC Rcd 2429, 2433, para. 12 (2008) (citations omitted).

²¹ 47 U.S.C. §§ 503(b), 301; 47 C.F.R. §§ 1.80, 1.903(a).

²² An FCC Form 159 and detailed instructions for completing the form may be obtained at

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sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²³ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁴ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Philadelphia Office, One Oxford Valley Building, Suite 404, 2300 East Lincoln Highway, Langhorne, Pennsylvania 19047, and include the NAL/Acct. No. referenced in the caption. Tesla Exploration, Inc. also shall e-mail the written response to NER-Response@fcc.gov.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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<http://www.fcc.gov/Forms/Form159/159.pdf>.

²³ See 47 C.F.R. § 1.1914.

²⁴ 47 C.F.R. §§ 1.16, 1.80(f)(3).

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Tesla Exploration, Inc. at 6430 South Fiddlers Green Circle, Suite 100, Attn: Quinten Bailey, Greenwood Village, Colorado 80111.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary